

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ESTATE OF JAMES W. EVANS,

Plaintiff,

vs.

KINECTA FEDERAL CREDIT UNION, et al.,

Defendants.

Case No. 2:13-cv-01160-GMN-CWH

ORDER

This matter is before the Court on Defendant Kinecta Federal Credit Union's Alternative Motion for Interpleader (#9), filed September 13, 2013; Plaintiff's Response (#12), filed September 26, 2013; and Defendant's Reply (#16), filed October 14, 2013. Contained within its reply, Defendant Kinecta also requested that the Court strike certain exhibits. That request has been carved out as a separate motion to strike (#17), which will also be considered in this order. The Court will also consider the parties' Stipulation to Stay Discovery (#20), filed November 21, 2013.

Defendant Kinecta's Motion for Interpleader (#9) is not a stand-alone motion but, rather, an alternative request in the event the motion to dismiss (#7) is denied. The motion was filed pursuant to Fed. R. Civ. P. 22(a)(2), which permits "[a] defendant exposed to similar liability [to] seek interpleader through a crossclaim or counterclaim." A crossclaim or counterclaim should be contained in a responsive pleading served pursuant to Fed. R. Civ. P. 13. Pleadings include "the complaint, answer, and reply, but not motions and other papers." *See Richardson v. Oppenheimer & Co., Inc.*, 2014 WL 1304343 (D. Nev.); *see also* Fed. R. Civ. P. 7(a). Thus, the alternative motion for interpleader is procedurally improper. The Court further notes, without addressing the

1 propriety thereof, that the complaint in this matter includes a claim requesting that the funds in
2 question be interpled, which may render the need for a crossclaim or counterclaim for interpleader
3 moot.

4 The alternative motion for interpleader really constitutes a request that the Court conduct a
5 scheduling conference and enter a scheduling order pursuant to Local Rules 22-1 and 22-2. Under
6 the circumstances, the Court would be inclined to conduct the scheduling conference, but the
7 parties have entered into a stipulation to stay all discovery pending resolution of the motion to
8 dismiss the complaint pursuant to Rule 12(b)(3) or to transfer venue pursuant to 28 U.S.C. §
9 1406(a). All defendants have stipulated to a stay of discovery. Thus, before conducting a
10 scheduling conference and entering a scheduling order, the undersigned will first address the
11 stipulation that discovery be stayed.

12 Courts have broad discretionary power to control discovery. *See e.g., Little v. City of*
13 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). The mere fact that parties stipulate to a stay does not
14 limit the Court's discretion to order a stay. In *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597 (D.
15 Nev. 2011), the court reviewed the state of the law as it pertains to staying discovery when a
16 dispositive motion is pending, such as here, and held that, in light of the directive in Rule 1 to
17 construe the Federal Rules of Civil Procedure in a manner to "secure the just, speedy, and
18 inexpensive determination of every action," the preferred approach in the District of Nevada
19 remains as previously set forth in *Twin City Fire Insurance v. Employers of Wausau*, 124 F.R.D.
20 652 (D. Nev. 1989) and *Turner Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554 (D.
21 Nev. 1997). Generally, a pending dispositive motion is not "a situation that in and of itself would
22 warrant a stay of discovery." *See Turner Broadcasting*, 175 F.R.D. at 554, 555-6 (quoting *Twin*
23 *City*, 124 F.R.D. at 653). The party seeking a stay of discovery "carries the heavy burden of
24 making a strong showing why discovery should be denied." *Tradebay*, 278 F.R.D. at 601 (citing
25 *Turner Broadcasting*, 175 F.R.D. at 556. An overly lenient standard for granting requests to stay
26 would result in unnecessary delay in many cases.

27 Courts generally insist on a particular and specific demonstration of fact as opposed to
28 merely conclusory statements that a stay is warranted. *Twin City*, 124 F.R.D. at 653. Evaluation of

1 a request for a stay often requires a magistrate to take a “preliminary peek” at a pending dispositive
2 motion. This “preliminary peek” is not intended to prejudge the outcome, but to evaluate the
3 propriety of a stay of discovery “with the goal of accomplishing the objectives of Rule 1.”
4 *Tradebay*, 278 F.R.D. at 601 (citation omitted). That discovery may involve inconvenience and
5 expense is not sufficient, standing alone, to support a stay of discovery. *Turner Broadcasting*, 175
6 F.R.D. at 601. Staying discovery when a pending dispositive motion challenges fewer than all
7 claims or does not apply to all defendants is rarely appropriate. Nevertheless, preliminary issues
8 such as jurisdiction, venue, or immunity are common situations that may justify a stay. *See Twin*
9 *City*, 124 F.R.D. at 653. Here, the underlying motion to dismiss (#7) raises important preliminary
10 questions about venue and whether this case ought to be adjudicated in the District of Nevada or
11 elsewhere. Accordingly, the undersigned finds that a stay of discovery is appropriate and will grant
12 the stipulation (#20).

13 Having stayed discovery at the parties’ request, the alternative request for interpleader and a
14 scheduling conference pursuant to Local Rules 22-1 and 22-2 will be denied without prejudice. As
15 a result, the pending motion to strike (#17) will also be denied without prejudice. The undersigned
16 has taken a preliminary peek at the underlying motion to dismiss (#7) and the exhibit Kinecta seeks
17 to strike does is not relevant to the motion to dismiss.

18 Based on the foregoing and good cause appearing therefore,

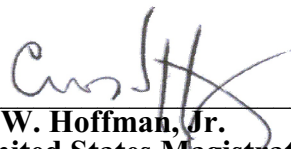
19 **IT IS HEREBY ORDERED** that Defendant Kinecta Federal Credit Union’s Alternative
20 Motion for Interpleader (#9) is **denied without prejudice**.

21 **IT IS FURTHER ORDERED** that Defendant Kinecta Federal Credit Union’s Motion to
22 Strike (#17) is **denied without prejudice**.

23 **IT IS FURTHER ORDERED** that the parties’ Stipulation to Stay Discovery (#20) is
24 **granted**.

25 **IT IS FURTHER ORDERED** that the parties shall submit a Scheduling Plan and
26 Discovery Order, if necessary, within fourteen (14) days after resolution of the Defendants’ Motion
27 to Dismiss (#7).
28

DATED: June 27, 2014.



C.W. Hoffman, Jr.
United States Magistrate Judge